

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 10-0126

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STATE OF MONTANA,

Plaintiff and Appellee,

v.

SCOTT RICHARD ALBRIGHT,

Defendant and Appellant.

FILED

AUG 05 2010

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

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**NOTICE OF CONCESSION**

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After consultation with the Gallatin County Attorney's Office, the Montana Attorney General's Office, on behalf of the State of Montana, submits the following Notice of Concession. In light of this concession, this Court should remand this case to the district court for a new trial.

**I. STATEMENT OF THE CASE AND FACTS**

The State charged Albright with Criminal Endangerment, alleging that he intentionally fired a handgun through his neighbor's apartment. Albright requested that the jury be instructed that a person acts knowingly when the person is aware of a high probability that the person's conduct will cause a specific result. (D.C. Doc. 70.) The State, in contrast, requested a conduct-oriented definition of knowingly. (11/17/09 Tr. at 558-61.) The district court granted the State's request

and instructed the jury, "A person acts knowingly when the person is aware of his or her conduct." (11/18/09 Tr. at 615.)

## II. DISCUSSION

In State v. Lambert, 280 Mont. 231, 236-37, 929 P.2d 846, 849-50 (1996), this Court held that in a prosecution for criminal endangerment the defendant has to act knowingly with respect to both his conduct and the substantial risk of death or serious bodily harm resulting from his conduct. Because Lambert's jury was instructed only that the defendant had to be aware of his conduct, this Court reversed and remanded for further proceeding. Lambert is controlling authority. Accordingly, the State is obliged to concede that this case should be reversed and remanded for a new trial.

Respectfully submitted this 5<sup>th</sup> day of August, 2010.

STEVE BULLOCK  
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By: Mark Mattioli  
MARK MATTIOLI

**CERTIFICATE OF SERVICE**

I hereby certify that I caused a true and accurate copy of the foregoing

Notice of Concession to be mailed to:

Ms. Sarah Chase Rosario y Naber  
Assistant Appellate Defender  
139 N. Last Chance Gulch  
P.O. Box 200145  
Helena, MT 59620-0145

(Hand delivered to the wire basket in the reception  
area of the Attorney General's office, 215 North  
Sanders, Helena, MT)

Mr. Eric Kitzmiller  
Gallatin Deputy County Attorney  
1709 West College Street  
Bozeman, MT 59715

DATED: \_\_\_\_\_

8/5/10

Morla Mattoli